

REMARKS

Claim 1 has been amended by incorporating the limitations of original claims 2, 3 and 7. Further, claim 1 and its dependent claims, has been amended to an "aqueous concentrate". Claim 9 has been amended by incorporating the limitations of original claims 12, 13 and 17. Claims 4, 5, 10, 11, 14-16, 26 and 27 have been amended to more clearly reference the antifoam agent. Claims 21 and 23-25 have been amended to more clearly define the solvent. Accordingly, claims 2, 3, 7, 12, 13 and 17 have been cancelled. No new matter has been added.

Priority

A certified copy of the Great Britain priority application has been submitted separately by post.

Oath/Declaration

A supplemental declaration is submitted herewith.

Specification

According to MPEP 608.01(b):

The abstract must commence on a separate sheet, preferably following the claims, under the heading "Abstract" or "Abstract of the Disclosure." The sheet or sheets presenting the abstract may not include other parts of the application or other material. Form paragraph 6.16.01 (below) may be used if the abstract does not commence on a separate sheet. **Note that the abstract for a national stage application filed under 35 U.S.C. 371 may be found on the front page of the Patent Cooperation Treaty publication (i.e., pamphlet).**

See MPEP § 1893.03(e). (emphasis added)

The present application is a National Stage application filed under 35 U.S.C. 371, accordingly the abstract is located on the front page of the Patent Cooperation Treaty publication. This is reflected on PAIR.

Claims 7 and 17 have been rejected under 35 U.S.C. 112, second paragraph as allegedly being indefinite. Applicants respectfully traverse.

While applicants submit that the classes of organic solvent are clear, claims 1, 9, 21 and 23-25 have been amended to further clarify the esters of organic acids. Claims 7 and 17 have been cancelled.

Claims 1-4 and 6-8 have been rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Feldmann et al. (US 3,210,248). Applicants respectfully traverse.

As discussed throughout the text of the present application, applicants have found that the problem of separation of antifoam may be overcome or mitigated if the antifoam is dissolved in a suitable solvent prior to incorporation in the aqueous formulation (page 2, lines 30-32). While Feldmann may teach an aqueous composition containing among numerous other components a silicone-containing antifoam and an ester solvent, there is no teaching or suggestion in Feldmann to form a solution of the ester solvent and the silicone-containing antifoam prior to incorporating into the aqueous composition.

Claims 1-4, 6, 9-14, 16, 19, 21 and 23 have been rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Sun et al. (US PG PUB 2003/0072776). Applicants respectfully traverse.

Sun teaches emulsifiable concentrates containing high levels of solvents and antifoam agents. Sun fails to recognize any criticality in selection of solvents or solubility of the foam control agents in the solvents. Further, Sun fails to teach aqueous concentrates comprising the solution of silicone-containing antifoam and ester solvents. Accordingly, Sun fails to anticipate the present claims.

Claims 1-6, 9-16 and 19-27 have been rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Atkinson et al. (US 6,162,764). Applicants respectfully traverse.

Atkinson teaches a pre-mixture composition which can be applied in water. The pre-mixtures of Atkinson are organic aliphatic solvent-based compositions comprising from 50 – 90% by weight of an aliphatic solvent and only from 0 to 14% of water.

The pre-mixtures of Atkinson are suitable for tank mixing with a pesticide, i.e. adding the pre-mixture to a tank containing large amounts of water not, however, to adding the antifoam composition to an aqueous agrochemical concentrate. Atkinson and the present invention relate to

the problem of stability at different stages of the pesticide handling. The reference is concerned with the problem of providing a stable pre-mixture composition which remains soluble or emulsifiable prior to application in water, whereas the present invention solves the problem of providing a stable aqueous composition wherein the antifoaming agent does not separate from the aqueous pesticide system. The pre-mixtures of Atkinson do not have issues with antifoam separation given that the large amount of solvent (i.e., 50 – 90%) fully solubilizes the antifoam. The organic aliphatic solvent-based composition of Atkinson cannot be considered to be an aqueous agrochemical concentrate according to the present claims.

Claims 5, 7, 17 and 24-27 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Sun et al. (US PG PUB 2003/0072776). Applicants respectfully traverse.

The Examiner suggests that it would have been obvious to employ esters of fatty acids as the solvents in Sun and use any order of adding the components to form the composition. Sun only exemplifies Aromatic 100 and Aromatic 150 as solvents. Silicone-containing antifoam agents typically have very low solubility in most solvents. Applicants have found that the esters of organic acids are much better solvents for the silicone-containing antifoam agents than other solvents tested. There is no recognition in Sun of the criticality of selecting a solvent such that the silicone-containing antifoam agent has a solubility in the solvent of at least 10% by weight. Further, there is no teaching or suggestion of forming a solution of the organic solvent and silicone-containing antifoam prior to adding to the water phase. The fact that individual components may be present in a formulation does not mean that the antifoam agent will necessarily form a solution in the solvent which is critical in addressing the problem of separation of antifoam which can be overcome or mitigated if the antifoam is dissolved in a suitable solvent prior to incorporation in the aqueous formulation

Claims 1, 5-9 and 15-18 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Sun et al. (US PG PUB 2003/0072776) as applied to claims 1-14, 16-17, 19, 21 and 23-27 and further in view of Pirson et al. (US 4,338,217). Applicants respectfully traverse.

The Examiner relies on Pirson to attempt to overcome the deficiencies of Sun. As discussed above, Sun relates to emulsifiable concentrates, not aqueous concentrates. Further, while Pirson

discloses a number of optional components that may be included in the antifoam, Pirson fails to provide any motivation to employ esters of fatty acids, form solutions of silicone-containing antifoam agents and esters of fatty acids or to use solutions of silicone-containing antifoam agents and esters of fatty acids in aqueous concentrate compositions. Accordingly, applicants submit that Sun, alone or in combination with Pirson, fails to render the present claims obvious.

Claims 1, 3-6, 9-11, 13-16 and 19-27 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Fisher et al. (US 6,403,163). Applicants respectfully traverse.

Fisher relates to a composition for rendering surfaces water repellant comprising a methylhydrogensiloxane polymer, an alkoxysilane and a silicone resin. At column 5, line 23, the reference teaches that “any solvent useful in masonry applications can be used.” Fisher teaches that the compositions may be solvent-based or water-based. It does not teach or suggest the degree of solubility, if any, of the organosilicone components in the solvent. There is no suggestion to use solvents ‘useful in masonry applications’, as taught by Fisher, for preparing aqueous agrochemical concentrates. Further, one of ordinary skill would not look to a reference directed to preparing water-repellant compositions for suggestions to prepare an aqueous agrochemical concentrate.

In view of the above amendments and arguments, Applicants respectfully submit that the rejections under 35 U.S.C. §§112, 102(b) and 103(a) have been overcome and hereby request that this application be passed to issue.

As this response is submitted within three months from the mailing date of the Office Action (January 1st was a Federal Holiday and January 2nd - 3rd was a weekend so the date for responding within the time provided is January 4th, 2010) no additional fees are believed necessary.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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